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10/664,560	09/17/2003	Howard Thomas Deason	9364	4599
27752	7590	07/19/2011		
THE PROCTER & GAMBLE COMPANY			EXAMINER	
Global Legal Department - IP			GRAY, JILL M	
Sycamore Building - 4th Floor				
299 East Sixth Street			ART UNIT	
CINCINNATI, OH 45202			PAPER NUMBER	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/664,560

**Applicant(s)**

DEASON ET AL.

**Examiner**

JILL GRAY

**Art Unit**

1798

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2011.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-42 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 28-42 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 04/27/2011  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Remarks***

1. Applicants request that prosecution be reopened and timely filing of a reply under 37 CFR 1.111 on March 25, 2011 has been noted and entered. Accordingly, prosecution in this application has been REOPENED.

***Response to Amendment***

2. Pursuant to the entry of the amendment of March 25, 2011, the status of the claims is as follows: Claims 1-27 are cancelled. Claims 28-42 are new and pending.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartbauer et al., 3,960,272 and 3,391,571 (referred to collectively as Hartbauer).

The examiner has interpreted the consumer accessible tab of Hartbauer as being the overlapping portion and fold. See components "306" and "308" of Figure 12 and "304", "306" and "308" of Figure 13.

Regarding claim 28, Hartbauer teaches a rolled multi-ply product. This teaching anticipates the requirement of a first fibrous structure ply and a second fibrous structure ply, wherein the first fibrous structure ply and the second fibrous structure are ply bonded together to form a multi-ply fibrous structure. The rolled multi-ply product of Hartbauer comprises a core end and a tail, wherein a portion of the tail is bound to a portion of the multi-ply fibrous structure with tail seal glue and the tail of the multi-ply

fibrous structure comprises a consumer accessible tab, as required by claim 28. See '272 and '571, Figures 11-15 and claim 17. In particular, components "306" and "308" of Figure 12 and "304", "306" and "308" of Figure 13. As to the requirement that the consumer accessible tab is positioned between the tail end and the tail seal glue, Figure 12 discloses a portion of the overlapping fold "306" which is located between the tail end and the tail seal glue "310". Figure 13 discloses tail seal glue that does not appear to extend downward to the tail end. A portion of the overlapping fold "304" and tail segments "306" and "308" of Figure 13, which encompass the consumer accessible tab appear to be located between the tail end and tail seal glue. Accordingly, the disclosure in Figures 12 and 13 anticipate the requirement that the consumer accessible tab is positioned between the tail end and the tail seal glue.

Regarding claim 29, Hartbauer teaches that the multi-ply fibrous structure is freely convolutedly wound from the core end out to the tail end to form a rolled multi-ply product. See '272, column 2, lines 61-66 and '571, column 2, lines 60-65.

Regarding claim 30, the consumer accessible tab of Hartbauer extends from about the tail end of the fibrous structure along the fibrous structure towards the core end of the multi-ply fibrous structure. Note Figures 12 and 13.

Regarding claim 31, this claim requires that the first and second fibrous structure plies are bonded together by one of mechanical forces, chemical forces, and electrostatic forces. This requirement is drawn to the method of making the multi-ply fibrous structure. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The

patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same or obvious from product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). MPEP 2113. Accordingly, the limitations of this claim add no patentable weight to the present claimed rolled multi-ply product. Therefore, the teachings of Hartbauer anticipate present claim 31.

Regarding claim 32, Hartbauer teaches that the multi-ply fibrous structure can be a sanitary tissue product. See '272 column 12, line 50 and '571, column 12, and line 52.

Therefore, the teachings of Hartbauer anticipate the invention as claimed in present claims 28-32.

5. Claims 28-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Butterworth et al., 6,372,064 B1 (Butterworth).

Regarding Independent claims 28, 35, and 38

Regarding claim 28, Butterworth discloses a tail sealer apparatus for a rolled product. See entire document and abstract. The rolled product can be a multi-ply product. See column 1, lines 37-46. This teaching anticipates the requirement of a first fibrous structure ply and a second fibrous structure ply, wherein the first fibrous structure ply and the second fibrous structure are ply bonded together to form a multi-ply fibrous structure. The rolled product of Butterworth comprises a core end and a tail, wherein a portion of the tail is bound to a portion of the rolled product with tail seal glue.

Note column 2, lines 42-60. In addition, Butterworth discloses that the tail comprises a tail end and free tail for the consumer to grasp in unwinding a new roll and that this free tail is located between the tail end and the tail seal glue. See column 8, lines 3-31. It is noted that applicants have defined their "consumer accessible tab" as being "a part of the multi-ply fibrous structure near the tail end of the fibrous structure that is accessible to a consumer using a never-before-used (i.e., brand new) multi-ply product." See page 3, lines 24-26 of the specification. Accordingly, Butterworth discloses that his tail comprises a tail end and a "consumer accessible tab." Moreover, said tab would be intermediate the tail end and the tail seal glue.

Regarding claims 35 and 38, the rolled product of Butterworth is convolutedly wound from the core end out to the tail end, whereby the tail end is the outermost, convolutedly would portion of the multi-ply structure. See Figure 10.

*Dependent claims 29-34, 36-37 and 39-42*

As to claim 29, Butterworth discloses a rolled product that is freely, convolutedly wound from the core end out to the tail end. See Figure 10.

As to claim 30, Butterworth discloses that the tail comprises a tail end and free tail for the consumer to grasp in unwinding a new roll and that this free tail is located between the tail end and the tail seal glue. See column 8, lines 3-31. This teaching necessarily results in a consumer accessible tab that extends from the tail end towards the core end of the rolled product.

As to claim 31, this claim requires that the first and second fibrous structure plies are bonded together by one of mechanical forces, chemical forces, and electrostatic

forces. This requirement is drawn to the method of making the multi-ply fibrous structure. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same or obvious from product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). MPEP 2113. Accordingly, the limitations of this claim add no patentable weight to the present claimed rolled multi-ply product. Therefore, the teachings of Butterworth anticipate present claim 31.

As to claim 32, Butterworth discloses that his rolled product can be toilet paper. See column 4, lines 17-20.

As to claims 33-34 and 40-42 Butterworth discloses that the tail comprises a tail end and free tail for the consumer to grasp in unwinding a new roll and that this free tail is located between the tail end and the tail seal glue. See column 8, lines 3-31, Figures 6 and 10. See also column 9, lines 13-20 which discloses that the tail is rewound onto roll after applying the tail seal glue. This teaching anticipates the requirement that the consumer accessible tab not be folded.

As to claims 36-37 and 39, as set forth above and incorporated herein, the consumer accessible tab is positioned intermediate the tail and tail seal glue. In addition, Figures 6, 8 and 10 of Butterworth discloses a tab that does not extend radially outward from the rolled product and that the tail end is the outermost, convolutedly

wound portion of the rolled product. See also column 9, lines 13-20 which discloses that the tail is rewound onto roll after applying the tail seal glue.

Therefore, the teachings of Butterworth anticipate the invention as claimed in present claims 28-42.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartbauer et al., 3,360,272 and 3,912,571 (referred to collectively as Hartbauer).

The examiner has interpreted the consumer accessible tab of Hartbauer as being the overlapping portion and fold. See components "306" and "308" of Figure 12 and "304", "306" and "308" of Figure 13.

Regarding claim 28, Hartbauer teaches a rolled multi-ply product. This teaching renders obvious the requirement of a first fibrous structure ply and a second fibrous structure ply, wherein the first fibrous structure ply and the second fibrous structure are ply bonded together to form a multi-ply fibrous structure. The rolled multi-ply product of Hartbauer comprises a core end and a tail, wherein a portion of the tail is bound to a portion of the multi-ply fibrous structure with tail seal glue and the tail of the multi-ply fibrous structure comprises a consumer accessible tab, as required by claim 28. See '272 and '571, Figures 11-15 and claim 17. In particular, components "306" and "308" of Figure 12 and "304", "306" and "308" of Figure 13. As to the requirement that the



consumer accessible tab is positioned between the tail end and the tail seal glue, Figure 12 discloses a portion of the overlapping fold "306" which is located between the tail end and the tail seal glue "310". Figure 13 discloses tail seal glue that does not appear to extend downward to the tail end. A portion of the overlapping fold "304" and tail segments "306" and "308" of Figure 13, which encompass the consumer accessible tab appear to be located between the tail end and tail seal glue. This teaching renders obvious the requirement of present claim 28. Furthermore, it is the examiner's position that a rolled multi-ply product comprising a core end and a tail that is bound to the multi-ply product by tail seal glue, wherein the tail comprises a tail end and consumer accessible tab is clearly disclosed by the prior art. Applicants' requirement that the consumer accessible tab is positioned between the tail end and the tail seal glue is drawn to the location of the tab and the tail seal glue. In view of Figures 12 and 13 of the prior art, this requirement constitutes an unpatentable rearrangement of parts (tail seal glue and/or fold). It is the examiner's position that the change in location of the consumer accessible tab, wherein said location is within the same general location as the prior art consumer accessible tab and performs the same function as the prior art consumer accessible tab constitutes no more than an unpatentable rearrangement of parts. It would have been obvious to one having ordinary skill in the art to adjust the location of the adhesive higher on the roll to the location where the fold meets the underlying roll (away from the free tail end) to aid in quick separation of the tab from the underlying roll with short tears. This rearrangement would result in the tab being between the tail seal glue and the tail end. See MPEP 2144.04.

Regarding claim 29, Hartbauer teaches that the multi-ply fibrous structure is freely convolutedly wound from the core end out to the tail end to form a rolled multi-ply product. The teachings of multi-ply would render obvious at least two plies bonded together.

Regarding claim 30, the consumer accessible tab of Hartbauer extends from about the tail end of the fibrous structure along the fibrous structure towards the core end of the multi-ply fibrous structure.

Regarding claim 31, Hartbauer specifically teaches that his fibrous structure can be a multi-ply fibrous structure. Accordingly, the examiner has reason to believe that the at least two plies of the multi-ply fibrous structure are bonded together by mechanical and/or chemical and/or electrostatic forces in the absence of factual evidence to the contrary.

As to claim 32, Hartbauer teaches that the multi-ply fibrous structure can be a sanitary tissue product. See '272 column 12, line 50 and '571, column 12, and line 52.

Regarding claim 33, as set forth above and incorporated herein, it is the examiner's position that the change in location of the consumer accessible tab, wherein said location is within the same general location as the prior art consumer accessible tab and performs the same function as the prior art consumer accessible tab constitutes no more than an unpatentable rearrangement of parts. See MPEP 2144.04. The requirement that the entire consumer accessible tab is positioned between the tail end and the tail seal glue constitutes a rearrangement of parts.

Accordingly the teaching of Hartbauer would have rendered obvious the invention as claimed in present claims 28-33.

8. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartbauer et al., 3,960,272 and 3,912,571 (Hartbauer) as applied above, and further in view of Von Paleske 6,924,042 B2.

Hartbauer is as set forth above and teaches a rolled multi-ply fibrous product of the type contemplated by applicants. Von Paleske teaches that it is known in the art to form multi-ply products wherein at least two of the plies are bonded together. See abstract and column 2, lines 25-63. Therefore, it would have been obvious to one of ordinary skill in this art, at the time the invention was made to use as the multi-ply fibrous product of Hartbauer, a multi-ply fibrous product of the type taught by Von Paleske and as known in this art, namely, a multi-ply fibrous product wherein the first ply and second ply are bonded together.

Therefore, the combined teachings of Hartbauer and Von Paleske would have rendered obvious the invention as claimed in present claims 28-33.

#### ***Response to Arguments***

9. Applicant's arguments with respect to the previous cancelled claims have been considered but are moot in view of the new ground(s) of rejection.

Applicants have not clearly defined that which they regard as their invention. In particular, multi-ply rolled products comprising a core end and tail wherein a portion of the tail is adhered to a portion of the rolled product with tail seal glue is known. Equally known are tails that comprise a tail end and "a part of the multi-ply fibrous structure near

the tail end of the fibrous structure that is accessible to a consumer using a never-before-used (i.e., brand new) multi-ply product", i.e., consumer accessible tabs.

Applicants' present claimed consumer accessible tab does not distinguish from those taught and described in the prior art.

No claims are allowed.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See all documents cited on the PTOL-892, in particular, Tellier, Jr., 3,393,105, see entire document, in particular, column 15, lines 1-20.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JILL GRAY whose telephone number is (571)272-1524. The examiner can normally be reached on M-Th and alternate Fridays 10:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Ortiz can be reached on 571-272-1206. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jill Gray/  
Primary Examiner  
Art Unit 1798

jmg